

Service Date: October 21, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Application of)	
Comm South Companies, Inc. and)	UTILITY DIVISION
U S WEST Communications, Inc.)	DOCKET NO. D98.5.103
Pursuant to Section 252(e) of the)	
Telecommunications Act of 1996 for)	ORDER NO. 6106
Approval of their Resale Agreement.)	

ORDER ON FIRST AMENDMENT TO RESALE AGREEMENT

INTRODUCTION

1. This Order addresses the "First Amendment to Agreement for Service Resale (Montana)" (First Amendment) filed by U S WEST Communications, Inc. (U S WEST) on August 26, 1998. Pursuant to 47 U.S.C. § 252(e)(4), the resale agreement between Comm South Companies, Inc. (Comm South) and U S WEST was deemed approved 90 days after filing because the Montana Public Service Commission (Commission) took no action to approve the application. Therefore, the agreement went into effect on August 9, 1998. However, the agreement contained three of the same four provisions previously rejected by the Commission in numerous resale agreements. The First Amendment to the parties' agreement revises these three sections consistent with the Commission's direction in several orders rejecting prior revisions to the sections. *See, e.g., In the Matter of the Application of Sterling International Funding, Inc. and U S WEST Pursuant to Section 252(e) of the Telecommunications Act of 1996 for approval of their Resale Agreement*, Docket No. D97.12.246, Order No. 6053a (May 18, 1998) (the "Sterling docket").

2. Order No. 6053a in the Sterling Docket provided guidance for revising the rejected sections in a manner that would be acceptable to the Commission. The parties' First Amendment in this Docket revises the following sections: (1) Section IV.C.4(d), proof of authorization for placing orders on behalf of end users; (2) Section VII.C.5, the absence of notification to the Commission if termination of service to the reseller is contemplated; and (3) Section VII.Q, the absence of notification to the Commission in connection with dispute resolution. The First Amendment revises these three sections pursuant to the Commission direction in Order No. 6053a and similar orders, and is approved as discussed below.

COMMISSION DECISION

Ordering and Maintenance - Section IV.C.4(d), First Amendment Section 1.1

3. Section IV.C.4(d) of the parties' agreement included a provision that Proof of Authorization (POA) for placing orders on behalf of the end user shall consist of documentation acceptable to U S WEST, which may be obtained by a "prepaid returnable postcard supplied by Reseller which has been signed and returned by the end user." The Reseller then would have to wait 14 days after mailing the postcard before placing an order to change. The Commission rejected this section in several agreements because it was not consistent with § 69-3-1303, MCA.

4. The parties' First Amendment revises Section IV.C.4 by deleting the first paragraph and sub-paragraphs a. through d., replacing subsection IV.C.4 with the following:

Prior to placing orders on behalf of the end user, Reseller shall be responsible for obtaining and have in its possession Proof of Authorization ("POA"). POA shall consist of documentation acceptable to USWC of the end user's selection of Reseller. Such selection may be obtained in any manner consistent with Montana law.

5. The Commission rejected the prior version of this section in the Sterling docket and in other dockets because it stated that U S WEST's selection of acceptable documentation could be obtained in "any manner consistent with Montana or federal law." Montana law on "slamming" is more prescriptive than the federal law and applies to unauthorized changes in local exchange service as well as unauthorized changes of a long distance carrier. The Commission stated clearly that the provision must conform to Montana law and that the reference to federal law should be deleted. The First Amendment deletes "or federal" from the last sentence of the section and this section is now acceptable.

Payment - Section VII.C.5; First Amendment Section 1.2.

6. Section VII.C in the parties agreement detailed the provisions for payment to U S WEST by Comm South. The Commission rejected subsection 5 in other agreements because it was not consistent with the public interest. We expressed our concern that resellers' failure to pay according to its terms could subject their end-user customers to disconnection by U S WEST through no fault on their part. The Commission expressed its concern that end user customers of resellers be notified if resellers are going to be disconnected. The Commission's orders rejected subsection 5 because it included no provision for timely notifying the Commission to enable the Commission to take appropriate action to protect the reseller's end user customers.

7. In Order No. 6053a and similar orders, the Commission suggested that language be included to provide that U S WEST shall notify the Commission at the same time it notifies a reseller of a pending disconnection. The Commission suggested that the first sentence of Section 1.3 in the First Amendment could be revised to state that U S WEST "will notify Reseller and the

Commission of such disconnection ten (10) days prior to the effective date of the disconnection."

Section 1.2 has been amended to reflect the Commission's suggestion and is acceptable.

Dispute Resolution - Section VII.Q, First Amendment Section 1.3.

8. The Commission rejected Section VII.Q of several agreements. Section VII.Q contained detailed provisions for resolving disputes by an arbitrator. The Commission expressed concern that the resolution determined by an arbitrator who is not the Commission may not be consistent with the Telecommunications Act of 1996 and emphasized the importance of Commission review for a decision reached by an out of state arbitrator to ensure that it complies with Montana law prior to its going into effect. The Commission rejected Section VII.Q in other agreements because it did not provide for notification to the Commission of issues to be arbitrated or of the subsequent decision reached by the arbitrator.

9. In Order No. 6053a and similar orders, the Commission suggested that the parties revise this section to comply with the law and to provide that an arbitrated decision shall not go into effect before the Commission reviews and approves it.

10. The First Amendment revising Section VII.Q states that the arbitrator's award "shall be final and binding and may be entered in any court having jurisdiction thereof subject to review by the Commission." It further provides that the parties shall advise the Commission that they will be settling a dispute through arbitration prior to retaining an arbitrator, that they will submit a copy of each arbitration opinion to the Commission within 10 days of service of such opinion, and that the arbitrator's decision shall become effective upon Commission approval or after the passage of 90 days of filing if the Commission takes no action concerning the filing. The revised section in the First Amendment is acceptable.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. U S WEST is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA. Comm South, as a provider of regulated telecommunications services in the State of Montana, also will be regulated when it offers local exchange service in Montana as a competitive local exchange carrier.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Commission has jurisdiction to approve amendments to the Interconnection Agreement negotiated by the parties and submitted to the Commission for approval according to Section 252(e)(2)(A). Section 69-3-103, MCA.

4. Commission approval of interconnection agreements and their amendments is subject to the requirements of federal law as set forth in 47 U.S.C. . 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements.

ORDER

THEREFORE, based upon the foregoing, it is ORDERED that the First Amendment to Agreement for Service Resale between U S WEST Communications, Inc. and Comm South Companies, Inc. is APPROVED.

DONE AND DATED this 19th day of October, 1998, by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.